

N.D.A.G. Letter to Stastney (Sep. 21, 1989)

September 21, 1989

Mr. Ronald C. Stastney
Assistant Superintendent
Department of Public Instruction
State Capitol
Bismarck, ND 58505

Dear Mr. Stastney:

Thank you for your August 24, 1989, letter requesting a clarification of N.D.C.C. § 15-21-07. This statute provides, in part, that the "superintendent of public instruction shall counsel with and advise county superintendents of schools and school boards upon all matters involving the welfare of schools, and on request, he shall give them written answers to all questions concerning school laws." You ask what type of advice and counsel is contemplated by N.D.C.C. § 15-21-07.

The statute speaks in broad terms concerning "all matters involving the welfare of schools." Therefore, the statutory language indicates the Legislature intended that the superintendent provide counsel on a wide range of matters which in some way concern the welfare of schools.

I cannot be more specific in outlining those matters which may be the subject of counsel than that provided by the statute. Any matter which may in some way involve the welfare of a school is within the scope of the "counsel and advise" provisions of N.D.C.C. § 15-21-07.

You ask how the advice and counsel should be given. The statute does not provide any guideline on the superintendent's provision of advice and counsel. This is a matter left to the superintendent's judgment and discretion.

You ask what process school boards should invoke in seeking the advice and counsel from the superintendent. Again, the statute does not provide us with any guidance on how the advice is to be sought. Thus, the superintendent possesses discretion in determining how the advice and counsel should be sought by a school board.

Finally, you ask under what circumstances should the superintendent seek opinions from the Attorney General. A general response is not possible. Instead, it depends upon the complexity of the inquiry.

If an inquiry is easily answered by reference to a statute, there should be no need to request an Attorney General's opinion or to consult an assistant attorney general. However, when the matter is not easily answered by reference to the North Dakota

Century Code or when there are conflicting statutes or some other legal confusion, the assigned attorney from this office should be consulted prior to responding to the inquiry. The assigned attorney will then be able to determine whether the matter needs to be resolved by a request for an Attorney General's opinion or whether the attorney can simply advise the superintendent on the status of the law on that subject.

My advice is to consult with the assigned attorney as closely as possible on those inquiries which cannot be easily answered by reference to the North Dakota Century Code.

Because the statute is broadly worded and does not provide specific guidelines, I cannot respond with further details to your individual questions. I hope this general discussion is of some assistance to you.

Sincerely,

Nicholas J. Spaeth

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